HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No. 23623 of 2004

Dated: 12th September, 2005

Between:

Sk.Mamola Jan W/o. Sk.Mastan, rep. by her Registered G.P.A. Holder-Chakka Shobha Rani W/o.Satyanarayana,

R/o.Ongole, Prakasam District.

..... PETITIONER

AND

1.The Commissioner, Ongole Municipality, Ongole, Prakasam District and another.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No. 23623 of 2004

ORDER:

This writ petition has been filed by Sk.Mamola Jan represented by her Registered G.P.A. Holder-Chakka Shobha Rani assailing the action of the Commissioner, Ongole Municipality, Ongole, in issuing the proceedings in Rc.No.10203/2003-G2, dated 08.01.2004, where under permission sought for by the petitioner for construction of house in an extent of 320 sq. yards has been rejected.

2. The petitioner claiming to be the owner of 40 gadies of site with a thatched house thereon filed O.S.No.158 of 1980 on the file of the Subordinate Judge, Ongole, for declaration of her title and for consequential permanent injunction. Ongole Municipality was one of the defendants in the suit. The other defendant was the

State of Andhra Pradesh represented by the District Collector, Prakasam District, Ongole. The suit ended in decree by judgment dated 27.09.1985. The defendants therein filed an appeal being A.S.No.984 of 1986 on the file of this Court. The said appeal ended in dismissal on 14.06.1999. Thereafter, the petitioner submitted a plan to the Ongole Municipality for approval of construction of a house therein. The application submitted by her for sanction came to be returned with the following objections under endorsement dated 31.12.2003.

> "The above referred application for sanction and granting permission for construction in T.S.No.14, Block No.2, Ward No.3, Kurnool Road, Ongole Town is verified and find the following objections:
>
> 1. Not showing the parking place in the plan.
> 2. Proposed site is tank poramboke and the applicant has not shown any evidence as the revenue department handed over the schedule land.
> 3. Proposed site is parking area of municipal complex.
> 4. Proposed site is not identified where it is located in T.S.No.14."

Subsequently, another endorsement came to be issued on 08.01.2004 and it is thus:

> "Smt.Chakka Shobha Rani W/o.Satyanarayana is hereby informed that the site in the above read document returned to the Government Land classified as "URA CHERUVU" as per the Town Survey records and the applicant is not in possession of the site nor taken possession from the Mandal Revenue Officer."

Assailing the said endorsements, the petitioner has filed this writ petition invoking the jurisdiction under Article 226 of the Constitution of India.

3. The first respondent filed counter affidavit. One Smt. C. Anuradha has sworn to the counter affidavit. It is stated in the counter affidavit that the boundaries shown in the plan are contra to the schedule given in the decree. Para. 7 of the counter affidavit reads as follows:

> "It is submitted that the respondent humbly submits that except the judgment the petitioner did not file any documents. The boundaries shown in the plan are contra to the schedule given in the decree attached to the judgment. The petitioner filed plan for approval on 11.09.2001 in Roc.No.11811/G1/2001 and the same was returned. In the said plan the boundaries are shown as roads on all four sides. The applicant gave measurements as 24.39 x 9.45 meters. In the 2nd plan the petitioner gave

measurements 17.66 x 15.44, which is quite different to the 1st plan. The petitioner gave northern boundary as road and the remaining East and South Municipal shops. The petitioner did not give boundary. So, the petitioner could not ascertain the boundaries to the property."

In nutshell the plea of the first respondent is that the plans submitted by the petitioner in 2001 and in 2004 do not tally each other and therefore, the petitioner herself is not in a position to identify the site and in which case, the first respondent is justified in not according the sanction for construction of the house.

4. Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the first respondent.

5. Learned counsel appearing for the petitioner submits that the respondents cannot dispute the title of the petitioner over 40 gadies of site in view of the judgment passed in O.S.No.158 of 1980, which came to be confirmed by this Court in A.S.No.984 of 1986. He further submits that the endorsement dated 08.01.2004 is contrary to the judgment passed in O.S.No.158 of 1980.

6. Learned Standing Counsel appearing for the first respondent submits that the petitioner herself is not in a position to identify the site over which she claims title and therefore, the first respondent is justified in not according sanction for construction of the house.

7. It is no more in dispute that the petitioner filed O.S.No.158 of 1980 on the file of the Subordinate Judge, Ongole, for declaration of title and for consequential permanent injunction against the State of Andhra Pradesh, represented by the District Collector, Prakasam District, Ongole and the Ongole Municipality, represented by its Commissioner and Special Officer. The said suit ended in decree. The defendants therein, who are the respondents 1 and 2 in the writ petition, challenged the decree in O.S.No.158 of 1980 by filing an appeal being A.S.No.984 of 1986 and the said appeal ended in dismissal. Therefore, the respondents having suffered the decree in O.S.No.158 of 1980 are estopped from disputing the title of the petitioner in respect of 40 gadies of site shown in the schedule to the suit. The property shown in the suit schedule is as follows:

"Prakasam District – Ongole Taluk, Ongole Town, Ongole Municipal limits – T.S.No.14, Block No.2, Ward No.III, Asst.No.1462 bounded by on the:

East : Siddabhathina Sreeramulu;

South: Baudaru Pullamma;

West: T.Yellamandarayudu;

North: Ongole to Kurnool Road;

Within these boundaries 40 gadies of site with a thatched house thereon."

It is crystal clear from the suit schedule that the site claimed by the petitioner is bounded by houses on three sides and road on one side. Whereas, the boundaries of the site shown in 2001 and 2004 plans do not tally with the boundaries of the site shown in the suit schedule. The respondents herein being parties to the said suit cannot deny the title of the petitioner in respect of the 40 gadies of site shown in the suit schedule. In that view of the matter, I deem it appropriate to direct the petitioner to submit a fresh plan to the Ongole Municipality, Ongole showing the correct boundaries, which would tally with the boundaries given in the suit schedule and thereafter, the first respondent has to consider the application in accordance with the provisions of the Andhra Pradesh Municipalities Act, 1965, and relevant rules within thirty days.

8. Accordingly, this writ petition is disposed of. No costs.

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B.SESHASAYANA REDDY, J.

Dated: 12th September, 2005.

Note:

Issue C.C. within a week.

B/O

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